UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FERNANDO PAZ, Plaintiff, v. CITY OF ABERDEEN, Defendant.	CASE NO. C13-5104 RJB ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court Defendant City of Aberdeen's Motion for Summary Judgment. Dkt. 12. The Court has considered the pleadings in support of and in opposition to the motion and the record herein.

INTRODUCTION AND BACKGROUND

The Plaintiff Fernando Paz commenced this action on February 13, 2013. Dkt. 1. The action arises out of an abatement process initiated by the City of Aberdeen which culminated in the demolition of a building owned by Mr. Paz. *Id*. The Complaint asserts due process and trespass claims alleging that the City unlawfully demolished Paz's building without proper notice. Dkt. 1 pp. 12-14; Dkt. 8 p. 1.

The Plaintiff owns property located at 217 N. "F" Street in the City of Aberdeen. In 2007, the property was owned by Richard R. Pennant. Dkt. 28 p. 2. In response to tenant complaints, the City of Aberdeen initiated abatement proceedings in 2007. Dkt. 20 p. 2; Dkt. 28 p. 2. Mr. Pennant attended an administrative hearing and executed a consent form for the City to inspect the building. Dkt. 20 p. 2; Dkt. 28 p. 2. The inspection found the condition of the premises unsafe for human habitation or other uses under the Aberdeen Municipal Code (AMC) 15.50.030. Dkt. 20 p. 2-3; Dkt. 28 p. 2. Mr. Pennant was issued an Order and Notice to Repair which provided a date of December 17, 2007, to submit a repair schedule to complete the necessary repairs. Dkt. 28 p. 2. Mr. Pennant did not complete the necessary repairs, or submit the requested repair schedule. Dkt. 28 p. 3. Ultimately, the City concluded that the property was not habitable and issued an order to vacate and secure the premises until it was repaired. *Id*. The property was vacated in response to this order. *Id.*

On September 12, 2008, the City was notified through an e-mail from Plaintiff Fernando Paz that he had purchased the subject property. Dkt. 13 p. 4; Dkt. 20 p. 3. Plaintiff's e-mail, and all of Plaintiff's subsequent e-mails, listed his address as 1918 E. Alder St. Seattle, Washington. *Id*. In response to Plaintiff's e-mail, on September 18, 2008, the City sent a letter to Plaintiff informing him of the abatement proceedings and requesting that he attend an informal administrative hearing, scheduled for September 29, 2008, to discuss Plaintiff's intentions for the property and to clarify the City requirements to restore the structure for habitable use. Dkt. 23 p. 6. This letter was sent by both regular and certified mail to Plaintiff's address at 1918 E. Alder Street, Seattle, Washington. Dkt. 20 p. 3; Dkt. 23 pp. 6-7. The certified mail was accepted and the regular mail was not returned, indicating to the City that Plaintiff's address was valid for receipt of City notifications addressed to Plaintiff. Dkt. 20 p. 3; Dkt 23 p. 7.

Plaintiff did not appear at the scheduling meeting. Instead, he contacted the City by e-mail indicating his intention to complete the necessary repairs to the building. Dkt. 13 p. 4. A permit for foundation and roof repair was issued to Plaintiff on June 5, 2009. Dkt. 23 p. 13. Plaintiff also obtained permits for temporary power to the building. Dkt. 23 pp. 15-17. When Plaintiff began to demolish the rear half of the structure without the necessary permits, a stop work order was issued on June 26, 2009, by the Department of Labor and Industries and the City. Dkt. 13 p. 4-5. Plaintiff obtained the demolition permit on July 16, 2009. *Id.* Plaintiff did not obtain any other permits for repair of the building and his existing permits expired due to inactivity. *Id*; Dkt 16 p. 13.

Due to the presence of debris, appliances and garbage located on the property, on July 17, 2009, the City Code Enforcement Officer sent Plaintiff a notice and order to abate unsafe and unlawful conditions under the AMC 8.08.030. The notice and order required that Plaintiff remove the debris, litter, junk and other fixtures from the outside of the property by July 27, 2009. Dkt. 20 p. 4; Dkt. 23 pp. 21-22. Although the City received notice that the certified mail had not been claimed, the plaintiff received the letter sent by first class mail. Plaintiff responded to the letter by e-mailing the City's building department on July 22, 2009, requesting additional time to remove the debris. Dkt. 16.

In February, 2010, the City began receiving complaints that sewage odors were coming from the Plaintiff's or neighboring property. Dkt. 13 p. 5. Upon investigation, it was determined that the sewer service for the property was open under the building. *Id*. On February 19, 2010, the City sent Plaintiff a Notice and Order to abate unsafe or unlawful condition on the property to address the accumulation of junk, debris and raw sewage. Dkt. 23 pp. 21-22; Dkt. 16 pp. 13. This was sent by first class and certified mail. Dkt. 27 p. 3. Plaintiff states that he did not

receive this Notice and Order. Dkt. 40 p. 2. Plaintiff sent an e-mail to the City on March 15, 2010 indicating he had recently learned of the sewer concerns with his building and requesting information about the issue. Dkt. 16 pp. 19-21. The e-mail was forwarded to the City Sewer Department which responded by e-mail explaining its findings. Dkt. 16 p. 18. Plaintiff did not comply with the abatement order. Dkt. 28 p. 5.

The City issued a formal Complaint of Unfit Building or Premises on March 9, 2010, and set a hearing on the issue for March 24, 2010. Dkt. 23 pp. 24-25. The Complaint states that a "[f]ailure to file an answer with the building official at or before the time set for the administrative hearing or to appear at the administrative hearing will result in an order requiring that the premises be made fit for human habitation or other use or that the premises be demolished, pursuant to AMC 15.50.070." *Id*. The Complaint was sent to Plaintiff at his Seattle address by certified and first class mail. Dkt. 23 pp. 26-27. Although the certified mail was returned unclaimed, the City did not receive a return of the copy sent by first class mail. *Id*. The Complaint was also posted on the premises. Dkt. 16 p. 14. Plaintiff states that he did not receive the Complaint or notice of the hearing. Dkt. 40 p. 2. The Plaintiff did not appear for the hearing held on March 24, 2010, and did not send a representative. Dkt. 13 p. 6; Dkt. 40 p. 2.

On March 25, 2010, the City sent Plaintiff a letter stating that the City had cleared the property of debris and secured the building. Dkt. 23 pp. 29-31. The letter also requested permission to conduct a full inspection of the property. *Id.* The letter informed Plaintiff that the Aberdeen Municipal Code grants the building inspector the right to enter, at reasonable times, any dwelling unit, structure or building within the City limits and to perform any duty imposed on him by the Code. *Id*. Plaintiff was expressly informed that the City would proceed to obtain a search warrant if such consent was not returned by the April 2, 2010 deadline. *Id*. Attached to

the letter was a consent form to be completed and returned by Plaintiff granting permission to conduct a full inspection. *Id.* The letter was sent by First Class and certified mail. Although the certified mail was later returned "unclaimed", the regular mail was not returned. Dkt. 23 pp. 32-33. Plaintiff states that he did not receive the letter or request for consent to inspect the property. Dkt. 40 pp. 2-3.

On March 30, 2010, Plaintiff sent an e-mail to the City building inspector and the building and code enforcement officer indicating receipt of a City letter. Dkt. 16 pp. 21-22. The email stated that it is Plaintiff's "intentions with the property are and were to finish the project." *Id*. The e-mail then discussed Plaintiff's problems regarding the sewer lines. *Id*. The e-mail did not address the City's request for access to the property. *Id*.

On April 22, 2010, the City sought a search warrant for the premises. Dkt. 28 p. 6; Dkt. 29 pp. 34-41; Dkt. 30 pp. 1-2. The affidavit sought access and the right to search for criminal violations of the AMC, including chapter 15.36 of the National Electrical Code, chapter 15.08 of the International Building Code, chapter 15.12 of the International Fire Code, chapter 15.50 of the Unsafe Buildings Code, chapter 8.08 AMC, the nuisance code, chapter 13.08, the solid waste code, chapter 13.56 AMC, the water code, and chapter 13.52, the sewer code. *Id.*

The same day the affidavit was submitted, April 22, 2010, the City code compliance officer received an e-mail from Plaintiff requesting information as to the right of the City to enter his property and indicating he planned to pay the City charges for clean-up of debris on the property. Dkt. 28 p. 6; Dkt. 40 p. 25-28. Plaintiff referenced a March 26, 2010 invoice mailed to his Seattle address for costs incurred by the City in abatement of nuisance debris. Dkt. 40 pp. 30-32. The compliance officer responded to the e-mail, explaining to Plaintiff that he had failed to respond to the City's notice of February 19, 2010, and did not appear for the administrative

hearing scheduled for March 24, 2010. Plaintiff was told that the City was obtaining a search warrant and that if he would like, the City would remove the garbage at his expense. Dkt. 31 p. 13.

Plaintiff responded by e-mails on April 22-23, 2010, complaining that he had not been properly notified. Dkt 31 p. 15; Dkt. 40 pp. 37-41. Plaintiff requested the City provide proof of service. *Id.*

On April 26, 2010, the Aberdeen Municipal Court issued a search warrant for the property and seizure of evidence of violations of the City's codes. Dkt. 31 p. 11. A copy of the warrant was posted on the premises and the City searched the property on April 29, 2010. Dkt. 28 pp. 6-7. A return of the warrant was prepared. Dkt. 31 pp. 17-20. The inspection and return of warrant documented severe degradation and code violations and demonstrated that the premises continued to deteriorate and were unfit for human habitation or other uses. Dkt. 13 p. 7; Dkt. 19 pp. 1-6.

Pursuant to the procedures outlined in the City's abatement code, AMC Chapter 15.50, the City building inspector used the inspection report and construction estimator software to estimate the construction costs necessary to repair and thus bring the building into compliance with the code. Dkt. 13 p 7-8. The cost of repair was estimated to be $118,769.61. *Id.* The building inspector also prepared an appraisal of the building using the Marshall and Swift Residential Cost Handbook. Dkt. 13 p. 8. The building was estimated to be valued at $203,147.00 before applying any depreciation to the building. *Id.;* Dkt. 24; Dkt. 25. Based on this information, the City Building Official determined the building needed to be demolished pursuant to the City's abatement code. *Id*. Pursuant to AMC 15.50.040(A)(1), demolition was

necessary because the estimated repair costs exceeded 50-percent of the replacement value for a building or structure of a similar size, design, type and quality. Dkt. 27 p. 4, 12.

On May 11, 2010, the City Building Official issued an Order to Vacate, Secure and Demolish the property. Dkt. 27 pp. 31-35. Demolition was necessary because, based on the inspection of April 29, 2010, the estimated repair costs exceeded 50-percent of the replacement value for a building or structure of a similar size, design, type and quality. Dkt. 24; Dkt 25; Dkt. 27 p. 4. The May 11, 2010 Order also notified the plaintiff of his right to appeal the Order within 30 days. Dkt. 27 p. 5

The Order was mailed to the plaintiff by both first class and certified mail on May 11, 2010, along with copies of the inspection report, construction estimate, the photographs, the Marshall & Swift estimate of replacement value, an appeal form and forms to apply for demolition permits. Dkt. 20 p. 5; Dkt. 24. The certified mail was returned, but the regular mail was not returned. Dkt. 25 p. 18. The Order was also posted on the premises. Dkt. 27 p. 4.

On May 15, 2013, the Plaintiff admitted actual receipt of this Order. Plaintiff e-mailed the City stating, "I received your letter." Dkt. 19 pp. 11-12. He further stated, "I can not (sic) demolish the building..." and "Please do not ask me to demolish my building." *Id*.

The City responded by e-mail on Monday, May 17, 2010, and advised the plaintiff of his appeal rights. Dkt. 19 p. 11. The Plaintiff responded by requesting an appeal form. Dkt. 19 p. 10; Dkt. 40 p. 4. The City responded indicating that everything Plaintiff needed to file an appeal was in the mailing they sent him. Dkt. 19 p. 10.

On May 18, 2010, Plaintiff sent an e-mail to the City stating that his neighbor had informed him that their mail was getting mixed up. Dkt. 40 p. 46.

After the appeal period had expired, on June 14, 2010, the City sent Plaintiff a letter notifying him that he had until July 14, 2010, to remove any personal property in the building or on the property. Dkt. 27 p. 5.

The Plaintiff sent the City an appeal, which was received by the City via fax on June 21, 2010 and by mail on June 22, 2010. Dkt. 27 p. 5; Dkt. 26 pp. 7-9, 11-13; Dkt. 40 p. 4.

On June 24, 2010, the City sent a letter to the plaintiff notifying him that the deadline for receipt of his appeal expired June 11, 2010, and that the City was proceeding with the abatement and demolition of the structure. Dkt. 27 p. 37; Dkt. 40 p. 4. Plaintiff then appeared at two City Council meetings in an unsuccessful attempt to plead his case. Dkt. 40 p. 5.

The City sought bids and received two responsive bids for the demolition of the plaintiff's property. Dkt. 27 pp. 5-6. The City accepted the lowest bid for $17,127 from Gordy Bagnell Trucking, and the bid was approved by the City Council on September 22, 2010. *Id.* Following demolition of the building, the City sent Plaintiff an invoice for the demolition costs. Dkt. 27 p 41. Plaintiff failed to pay the invoice. Dkt. 27 p. 6. The assessment of cost costs was then transmitted to the County Treasurer's office for entry upon the tax rolls against the subject property as required by City Code and statute. Dkt. 27 p. 47.

On February 13, 2013, Plaintiff filed this action. Dkt. 1.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, affidavits or declarations, stipulations, admissions, answers to interrogatories, and other materials in the record show that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In assessing a

motion for summary judgment, the evidence, together with all inferences that can reasonably be drawn there from, must be read in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574, 587 (1986).

The moving party bears the initial burden of informing the court of the basis for its motion, along with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party must make a showing that is sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party. *Idema v. Dreamworks, Inc*., 162 F.Supp.2d 1129, 1141 (C.D. Cal. 2001).

To successfully rebut a motion for summary judgment, the non-moving party must point to facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A "material fact" is a fact that might affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986). A dispute regarding a material fact is considered genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, at 248. There must be specific, admissible evidence identifying the basis for the dispute. *S.A. Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co., Inc*., 690 F.2d 1235, 1238 (9th Cir. 1980). The mere existence of a scintilla of evidence in support of the party's position is insufficient to establish a genuine dispute; there must be evidence on which a jury could reasonably find for the party. *Anderson*, at 252.

PROCEDURAL DUE PROCESS

Plaintiff asserts that the City of Aberdeen violated his due process rights as guaranteed by the United States Constitution. Plaintiff argues that the City violated his procedural due process

rights under the United States Constitution by failing to provide him with adequate notice of its orders to repair and later demolish his building, and his appeal rights.

The federal Constitution requires notice "prior to an action that affects an interest in life, liberty, or property by the Due Process Clause of the Fourteenth Amendment." *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795 (1983); see also *Mullane v. Cent. Hanover Bank Trust Co*., 339 U.S. 306, 314 (1950). There is no question that the Plaintiff's ownership interest in real property merits the procedural protections of due process of law. *United States v. James Daniel Good Real Prop*., 510 U.S. 43, 49 (1993). The only question is whether the Plaintiff has come forward with sufficient evidence to show constitutionally inadequate notice.

Due process does not require that a property owner receive actual notice before the government may take his property. *Jones v. Flowers*, 547 U.S. 220 (2006). Under the Fourteenth Amendment, what is required is "notice reasonable under the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections." *Mennonite*, 462 U.S. at 795. Therefore, the City was required to use reasonably diligent efforts to provide notice to Plaintiff. The notice is "constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent." *Jones*, 547 U.S. at 226.

The City mailed to Plaintiff the Complaint of Unfit Building or Premises, the letter requesting consent to conduct an inspection, and the Order to Vacate, Secure and Demolish the property. These notices and orders were mailed by both certified and first class mail to Plaintiff's known Seattle address. The Complaint and Order to Demolish were also posted on the premises. In all three instances, the certified mail was returned unclaimed. The first class mail was not returned.

Plaintiff alleges all the City notices were not received and argues that when the certified mail was returned unopened, the City violated his due process rights in not taking further steps to inform his of the proceedings. In support of this argument, Plaintiff cites *Jones v. Flowers*, 547 U.S. 220 (2006). The situation presented here, however, is distinguishable from that in *Jones*.

In *Jones*, the Supreme Court found that when notice sent by certified mail is returned unopened, a municipality is responsible for taking additional steps to ensure that notice is received. *Id.* at 235. *Jones* suggests that the necessity for additional reasonable measures to provide notice depends on the circumstances. While the Court said that it would not dictate how notice should be provided, since notice was only sent by certified mail and returned, the Court suggested that other reasonable steps could be taken such as resending notice by regular mail and posting the notice on the property. *Id*. at 234-35.

In the present case the undisputed evidence demonstrates that both certified and regular mail notices were sent to the Plaintiff's known Seattle address. Although the certified mail was returned unclaimed, the notices sent to the Seattle address by regular mail did not come back. In *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983), the United States Supreme Court held that "[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party ... if its name and address are reasonably ascertainable." Generally, notice is sufficient if mailed to an address reasonably believed to be that of the intended recipient. *Dusenbery v. United States*, 534 U.S. 161, 172 (2002). The Supreme Court has repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice. *Tulsa Prof'l Collections Servs., Inc. v. Pope*, 484 U.S. 478, 490 (1988). Mail properly addressed, stamped and deposited in the mail system is presumed to

have been received by the party to whom it has been addressed. *Hagner v. United States*, 285 U.S. 427, 430 (1932); *Lewis v. United States*, 144 F.3d 1220, 1222 (9th Cir. 1998); *Schikore v. BankAmerica Supplemental Ret. Plan*, 269 F.3d 956, 961 (9th Cir. 2001).

Plaintiff's allegation that the City had the opportunity to notify him of the intended demolition during his email exchanges with City employees does not raise a genuine dispute of material fact concerning the reasonableness of the City's steps to provide notice.

Here, the City had no information that would give reason to suspect Plaintiff would not actually receive notice mailed to his known address. The evidence in fact demonstrates that Plaintiff did receive mail at the stated address. Further, it is not necessary that Plaintiff actually receive notice; it is sufficient that the City used methods reasonably designed to notify him. Subjected to the notice standards of procedural due process, the attempts at notice here must be found sufficient, despite their purported lack of success.

Plaintiff's procedural due process claims are subject to dismissal.

Further, the City is also protected from due process claims under the federal Constitution because it has established a reasonable procedure for the service of notice. In *Monell v. Dept. of Social Serv.*, 436 U.S. 658, 690 (1978), the Supreme Court found that municipalities cannot be held liable under Section 1983 of the Civil Rights Act for an act inflicted solely by its employees or agents. "Instead, it is when execution of a government's policy or custom ... inflicts the injury that the government is an entity responsible under Section 1983." *Id.* To establish *Monell* liability, plaintiff must demonstrate that the defendant's policy or custom caused the alleged constitutional injury.

Although Plaintiff's complaint asserts that the City's municipal code has a number of defects that result in a deprivation of due process when undergoing hearings regarding the

potential demolition of a building (Dkt. 1 p. 5), Plaintiff has failed to support this argument with any evidence raising a genuine issue of material fact. The City's established practice of sending notices by both regular and certified mail and posting the notices on the subject property satisfies due process concerns. There is no evidence that the alleged inadequate notice to Plaintiff was part of an unconstitutional custom, policy, or widespread practice, or that there is evidence of repeated constitutional violations for which the errant municipal officers were not held accountable. See *Gillette v. Delmore*, 979 F.2d 1342, 1349 (9th Cir. 1992); *Davis v. City of Ellensburg*, 869 F.2d 1230, 1233 (9th Cir. 1989). In the absence of such evidence, there is no genuine issue of material fact on this issue and Plaintiff's procedural due process claims are subject to dismissal.

SUBSTANTIVE DUE PROCESS

Plaintiff's Complaint, while focusing primarily on the procedural due process claims, also appears to assert that the City violated Plaintiff's substantive due process.

The elements of a substantive due process claim are (1) the deprivation of a fundamental property interest and (2) governmental deprivation of that property interest in a manner that is arbitrary or shocks the conscience. *United States v. Salerno*, 481 U.S. 739, 746 (1987); *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936, 948-49 (9th Cir. 2004).

It is well established that the state has the right to regulate the use and conditions of property to ensure the public safety and health, and that the public interest demands that dangerous conditions be prevented or abated. See *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470, 491-92 (1987); *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 537 (1967).

The evidence shows that the property was in an imminently dangerous condition and that Plaintiff has come forward with no evidence that the property was not in an imminently dangerous condition.

The demolition of imminently dangerous structures in accordance with City procedures does not shock the conscience. See *Hoeck v. City of Portland*, 57 F.3d 781, 786 (9th Cir. 1995)(City's demolition of the plaintiff's vacant building had a rational basis and City had ample authority under the Portland City Code to abate abandoned buildings); *Davet v. City of Cleveland*, 456 F.3d 549, 552 (6th Cir. 2006)(affirming district court's holding that plaintiff's substantive due process claim failed because he could not establish that municipal actions taken pursuant to a valid condemnation order and in accordance with the procedures mandated by city and state law shocked the conscience or were arbitrary and capricious). Although Plaintiff complains about the appraisal process, there is no evidence raising a genuine issue of fact the procedures employed by the City were constitutionally deficient. Accordingly, the City is entitled to summary judgment on any substantive due process claim.

TRESPASS CLAIM

The City also seeks dismissal of Plaintiff's trespass claim.

To establish intentional trespass, a plaintiff must show (1) an invasion of property affecting an interest in exclusive possession; (2) an intentional act; (3) reasonable foreseeability that the act would disturb the plaintiff's possessory interest; and (4) actual and substantial damages. *Bradley v. Am. Smelting & Ref. Co.*, 104 Wn.2d 677, 692–93 (1985). An entry upon another person's land that might otherwise be wrongful is not a trespass if it is a privileged entry. See *Brutsche v. City of Kent*, 164 Wn.2d 664, 673-76 (2008)(if officers executing a search warrant unnecessarily damage the property while conducting their search, that is, if they damage

the property to a greater extent than is consistent with a thorough investigation, they exceed the privilege to be on the land and liability in trespass can result).

In this case, the City was privileged to enter the plaintiff's property to abate a public nuisance. Entry onto property is authorized by the Aberdeen Municipal Code. It is not a trespass for public agency inspectors to enter property pursuant to authority granted by statutes and rules safeguarding public health. *Peters v. Vinatieri*, 102 Wn. App. 641, 656 (2000).

The City's evidence shows (1) that the search warrants were issued based upon probable cause to believe that there were numerous criminal violations of City codes identified on the face of the affidavit for the warrant; (2) that these various codes make violations a misdemeanor; (3) that the warrant itself states that there is probable cause to believe that there is evidence of a crime at the plaintiff's building; (4) that the Aberdeen Municipal Court has jurisdiction to issue criminal search warrants; and (5) that the warrant was authorized on a showing of probable cause, upon presentation of an affidavit under oath or sworn testimony establishing the grounds therefore.

In light of this uncontroverted evidence, Plaintiff's trespass claim is subject to dismissal.

ATTORNEY FEES AND COSTS

A district court may award attorneys' fees pursuant to 42 U.S.C. § 1988 to a prevailing civil rights defendant if the plaintiff's action was "unreasonable, frivolous, meritless, or vexatious." *Galen v. County of Los Angeles*, 477 F.3d 652, 666 (9th Cir. 2007);*Vernon v. City of Los Angeles*, 27 F.3d 1385, 1402 (9th Cir.1994). An action becomes frivolous when the result appears obvious or the arguments are wholly without merit. See *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978); see also *Hughes v. Rowe*, 449 U.S. 5, 14-15 (1980). A defendant can recover if the plaintiff violates this standard at any point during the litigation, not

just at its inception. See *Christiansburg Garment Co*., 434 U.S. at 422. The fact that a plaintiff loses at summary judgment does not render the case *per se* frivolous, unreasonable, or without foundation. *Galen*, 477 F.3d at 667.

Although Plaintiffs claims are borderline unreasonable, they are not wholly without merit. Defendant is not entitled to an award of attorney's fees and costs.

CONCLUSION

Taking the summary judgment evidence in the light most favorable to Plaintiff, the evidence shows that the City of Aberdeen took reasonable steps to provide Plaintiff notice of the proceedings, and that Plaintiff is not entitled to relief under 42 U.S.C. § 1983 for violation of procedural or substantive due process. Plaintiff's trespass claim is also subject to dismissal.

Therefore, it is herby **ORDERED**:

Defendant's Motion for Summary Judgment (Dkt. 12) is **GRANTED.** Plaintiff's claims are **DISMISSED WITH PREJUDICE**. Defendant's request for an award of attorney's fees and costs is **DENIED**.

Dated this 17th day of December, 2013.

ROBERT J. BRYAN
United States District Judge